Reserved.

COURT NO. 3

Criminal Miscellaneous Application No. 183 of 2002.

Shahna and others ….Applicant

Vs.

State of Uttaranchal & another …..Respondents.

Hon'ble Irshad Hussain, J.

This petition under section 482 of the Code of Criminal Procedure (hereinafter for short 'Code') has been filed for quashing of the F.I.R. dated 10.04.2002 in case crime no.61 of 2002, under sections 363/366/120-B of I.P.C., P.S. Ranipur, District Hardwar.

Heard Sri Arvind Vashist, learned counsel for applicants and Sri M.C.Kandpal, learned counsel for respondent no. 2 and learned A.G.A.

It need to be mentioned at the outset that respondent no.2 lodged an F.I.R. on 10.04.2002 at 10:10 A.M. alleging that on 07.04.2002 at about 2:00 A.M. Smt. Shahnaz and Ayyub petitioners nos.2 and 3 respectively with the help of Shauqin, petitioner no.3 have deceitfully kidnapped his sister Ms Shahna aged about 16 years, the petitioner no.1 from the house and that the witnesses Furkan and Munna have seen them together while going away from the house. The F.I.R. was registered at the police station Ranipur district Hardwar and the investigation by the police is being conducted. Petitioner no.4 was arrested by the police on 10.04.2002 and later on this petitioner was released on bail.

It is also need to be pointed out that Smt.Kishwar Jahan, real sister of Ms Shahna, petitioner no.1 was married to Ayyub-petitioner no.3 in the year 1997 and according to the petitioners, husband-petitioner no.3 had divorced his said wife on 01.01.2002. Learned counsel for the petitioners submitted that petitioner no. 1 was maintaining her courtship with petitioner no.3 for the last about two years and she had left her house out of her own free will and consent and had married with petitioner no.3 on 10.03.2002, i.e. prior to the lodging of the F.I.R. in question and that F.I.R. was lodged with false allegations against the petitioners.

On behalf of the respondents it was argued that Ms Sahana was a minor and question of her leaving the house of her own will and consent does not arise and further that no divorce between petitioner no.3 and his wife had taken place and that in fact the petitioner no.1 had been kidnapped from her house by other petitioners and the allegations of the F.I.R. being inherently probable, the same cannot legally be quashed.

Having considered the broad features of the case in the light of the legal aspects of the matter, it may be pointed out at the outset that the petition is devoid of merit and need to be dismissed as such.

The reasons are that the High Court in its inherent powers under section 482 of the Code would not embark upon an enquiry as to whether the allegations of the F.I.R. are credible. At this stage it has merely to be seen as to whether the allegations are inherently probable or not. The factum of marriage between petitioner no.1 and petitioner no.3 by free and mutual consent cannot be ascertained at this stage and this is the job of investigating agency which may examine the witnesses of the prosecution and may as well record the statements of the accused named in the F.I.R. to come to definite conclusion in regard to allegations of the F.I.R. We also cannot loose sight of the

fact that without valid divorce between petitioner no. 3 and his wife Smt. Kishwar Jahan, a valid marriage between the said petitioner and petitioner no.1 Ms Sahana, who is real sister of Smt. Kishwar Jahan, could not have taken place on account of unlawful conjunction under the Muslim law and this aspect of the matter can also not be probed at this stage and the court has to go by the allegations of the F.I.R. itself. As the things stand the allegations made in the first information report at their face value prima facie constitute an offence of kidnapping and therefore, the question of quashing of the F.I.R. in question does not arise. It is the settled legal position that when offence has been disclosed in the F.I.R., the High Court will not interfere with the investigation and the investigating agency had to be permitted to complete it.

For the above reasons the petition being devoid of merit is dismissed accordingly.

08.04./2003/B. **(Irshad Hussain, J.)**